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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children
in armed conflicts
Fifth session
Geneva, 11 January 1999

Report of the Chairman of the working group prepared pursuant to Commission resolution 1998/76

Introduction

1. In paragraph 14 (b), (c) and (d) of its resolution 1998/76 of 22 April 1998, entitled "Rights of the child", the Commission on Human Rights encouraged the Chairman of the working group to conduct broad informal consultations with the aim of promoting an early agreement on the optional protocol and to produce a report thereon by the end of 1998 including, if possible, recommendations and/or ideas on the best way for the formal negotiations to proceed. The Commission requested the working group to meet in early 1999, primarily to consider the Chairman's report on the status of informal consultations, which should be available well in advance, and to report to the Commission on Human Rights at its fifty-fifth session. The Secretary-General was requested to give the necessary support to the working group to meet for a maximum of two weeks, if the working group decided that an agreement on the draft optional protocol was possible at that session.

2. The report prepared by the Chairperson of the working group, Ms. Catherine von Heidenstam (Sweden), is reproduced below.

I. REVIEW OF CONSULTATIONS AND RECOMMENDATIONS TO THE WORKING GROUP

3. The Chairman has conducted broad informal consultations with the Committee on the Rights of the Child, the Special Representative of the Secretary-General on children in armed conflict, as well as with representatives of Governments, United Nations agencies, international

organizations, including the International Committee of the Red Cross (ICRC) and NGOs. The Chairman was able to acknowledge the existence of a genuine desire to strengthen the international standards for protection of children in armed conflicts, in particular by raising the minimum age for recruitment and participation in hostilities. The Chairman noted however, as did the working group at its fourth session, a lack of consensus on raising the minimum age to 18 years.

4. Based on these consultations, the Chairman has concluded that there is general support for finalizing the draft optional protocol. An increased awareness of the deplorable use of children in armed conflicts and commitment to combating it was noted. In this context the Chairman noted a number of activities to protect children from involvement in armed conflicts.

5. In view of the limited progress achieved at the previous session of the working group, as well as the time constraints, the Chairman has concluded that more time is needed for consultations and preparation. Considering the widespread concern, the Chairman believes that her initial consultations ought to continue for another year in order to enable her to formulate recommendations on the best way for the formal negotiations to proceed. The Chairman believes that her task will be positively supported by parallel activities, inter alia in the field, by Governments, United Nations agencies, the Committee on the Rights of the Child, international organizations and NGOs. By their actions, the Secretary-General, the Security Council, the High Commissioner for Human Rights and the Special Representative of the Secretary-General on the children in armed conflict have demonstrated their willingness to fulfil their special roles and responsibilities in this matter.

6. The Chairman believes that more consultations are required before further negotiations on the texts are carried out in the working group. Consequently, she wishes to propose that, during its fifth session, the working group meet for a brief period only, preferably not more than two days, beginning on 11 January 1999, in order to give States the opportunity to consider the Chairman´s report and to agree on a recommendation to the Commission on Human Rights that she be encouraged to continue her informal consultations. As a sense of urgency prevails regarding the matter, the aim should be to finalize the draft optional protocol by the tenth anniversary of the Convention on the Rights of the Child, in accordance with Commission resolution 1998/76.

II. BACKGROUND AND SCOPE OF THE ISSUE

7. According to article 1 of the Convention on the Rights of the Child, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". Its article 38.2 and 38.3 prescribes that:

> "2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest."

8. In 1993, following a special appeal by the World Conference on Human Rights, the Committee on the Rights of the Child recommended the adoption of an optional protocol to the Convention on the Rights of the Child with the purpose of raising the minimum age to 18 years, and subsequently prepared a draft for such a protocol.

9. In 1994, the Commission on Human Rights established an open-ended working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts (resolution 1994/91).

10. The purpose of the working group is to elaborate, as a matter of priority, a legal instrument in the form of a draft optional protocol to the Convention on the Rights of the Child, the aim being to achieve a universal agreement, on raising the minimum age for recruitment into armed forces and other groups as well as for participation in hostilities from the age of 15 years stipulated at present. This is based on a common perception that there is an urgent need to take action to strengthen the protection of children in armed conflicts through more advanced international standards, the central issue being to protect children from being used in combat.

11. The working group held its first session in October-November 1994, followed by three sessions in January 1996, January 1997 and February 1998. The working group has each time reported to the Commission on Human Rights, which in its turn has mandated the working group to continue its work in order to finalize the draft optional protocol. The next, fifth, session of the working group, is scheduled to start on 11 January 1999 and last for a maximum period of two weeks.

12. The working group has held a number of plenary meetings during which general questions relating to a draft optional protocol were discussed. These meetings have been supplemented by informal meetings in the form of open-ended consultations with the Chairman.

13. The working group is open-ended in character. Some 40 countries have participated in its discussions, as well as an average of 30 United Nations bodies and agencies, international organizations and NGOs. The text originally drafted by the Committee on the Rights of the Child has served as the basis for its work.

14. The working group decided, at its fourth session in February 1998, to adjourn early as it was evident that there was no possibility of reaching agreement on the proposed optional protocol within the allotted time-frame. During that session, the Chairman had circulated a paper, setting out his perception of a draft optional protocol. The working group agreed to add a revised version of this paper, entitled "Chairman's perception" as annex II to the report of the working group on its fourth session (E/CN.4/1998/102 and Add.1).

15. The main topics discussed by the working group during the general discussion on questions relating to the draft optional protocol included the minimum age for participation in hostilities, the issue of direct or indirect involvement in hostilities, the age of recruitment, be it voluntary or compulsory, into armed forces, and the possibility of including a clause to prevent child recruitment by non-governmental armed groups.

16. During the latest session of the working group, differences remained among States on the question of the minimum age for participation in hostilities. The working group recognized recruitment as the crucial element in order to prevent the involvement of children in armed conflicts. However, no agreement was reached among States on the minimum age for recruitment, including recruitment by non-governmental entities. This is reflected in the report of the working group to the Commission on Human Rights at its fifty-fourth session (E/CN.4/1998/102).

17. In paragraphs 12 and 14 of resolution 1998/76, the Commission on Human Rights, inter alia, called upon all States and other parties to armed conflict to end the use of children as soldiers and to ensure their demobilization, and decided to encourage the Chairman of the working group to conduct broad informal consultations with the aim of promoting an early agreement on the optional protocol and to produce a report thereon.

18. Several important developments have taken place which have advanced the issue. During its four sessions, the working group has been able to reach some progress. Differences have been narrowed down. However, agreement still remains to be reached on the central issue of the draft optional protocol, namely increasing the minimum age to 18.

III. ADVOCACY AND ACTION

19. In order to introduce a non-exhaustive summary of relevant activities and signs favouring continued consultations in order to achieve an optional protocol, the Chairman first wishes to refer to some elements of a statement made by the High Commissioner for Human Rights to the working group on 9 February 1998. The High Commissioner's remarks coincide well with the Chairman's impressions from her consultations, illustrating growing support for achieving agreement on the remaining issues. The High Commissioner for Human Rights noted in brief:

(a) A growing tendency towards consensus among Governments, United Nations agencies, international organizations and NGOs that the minimum age for participation in hostilities should be set at 18 years, as recommended by Ms. Graça Machel, the former expert on the impact of armed conflicts on children, by UNICEF, UNHCR and ICRC, as well as by a wide variety of NGOs, in line with the view expressed by the Committee on the Rights of the Child that persons below the age of 18 should not be involved in hostilities, nor recruited, a view supported by Mr. Olara Otunnu, Special Representative of the Secretary-General on the impact of armed conflict on children, in his statements and reports;

(b) A readiness among delegations to adjust their positions and change national legislation to make it compatible with new international standards;

(c) A widespread sentiment that the working group, although searching for solutions that would have the broadest possible support, would not be prepared to accept an unsatisfactory compromise, bearing in mind also the optional character of the protocol.

20. In October 1998, the Secretary-General of the United Nations announced his decision to establish a minimum age requirement for United Nations peacekeepers, asking contributing Governments to send, in their national contingents, troops preferably not younger than 21 years, and in no case less than 18, and not to send civilian police and military observers younger than 25 years. It was explicitly said that this decision has been taken as an additional and proactive measure in the United Nations efforts to promote the rights of the child and also to create an example for police and military forces worldwide. At the Meeting of the Organization for Security and Cooperation in Europe (OSCE), Implementation on Human Dimension Issues, held in Warsaw in November 1998, it was proposed that OSCE follow the same rules in its operations.

21. The United Nations Security Council, in a presidential statement (PRST/1998/28) on 29 June 1998, following an open debate in the Security Council on the question of children in armed conflicts, stressed the harmful impact of armed conflict on children and expressed the intention of the Security Council to pay serious attention to the situation of children affected by armed conflicts.

22. At its meeting in October 1998, the Committee on the Rights of the Child, the initiator of the draft optional protocol, increasingly alarmed at the tragic consequences for children of their direct or indirect involvement in armed conflict, recalled:

> "The Committee has repeatedly formulated its strong belief in the need to complement the effective implementation of existing standards of protection under the Convention on the Rights of the Child with the improvement of the existing normative framework. In this sense, the Committee has resolutely restated and endorsed all calls for the drafting and adoption of an optional protocol which would require States that voluntarily ratify the optional protocol to raise the minimum age for mandatory recruitment or voluntary enlistment of children into armed forces, and for direct or indirect involvement of children in hostilities, to 18 years".

23. The Executive Committee of the UNHCR Programme, recognizing that refugee and newly repatriated children are at highest risk of illegal recruitment, has adopted a conclusion on the protection of refugee children, calling upon States to participate constructively in the negotiations on an optional protocol with the aim of achieving early agreement on the text. UNHCR has repeatedly stated its support for the drafting of this optional protocol and its view that there should be a clearly established limit of 18 years for all forms of participation in and recruitment to armed forces.

24. The Special Representative of the Secretary-General on children in armed conflict has visited several countries in which children have been exploited as soldiers, such as Sierra Leone, Liberia and Sri Lanka, to discuss the

situation of children affected by war, including the question of release and demobilization of child soldiers. The Special Representative was able to obtain promises from the concerned parties that they would abstain from using child soldiers. The Special Representative also visited Kosovo.

25. The United Nations General Assembly has adopted resolution 53/128 on the rights of the child, in which inter alia it urged States and all other parties to armed conflict to adopt all necessary measures to end the use of children as soldiers and to ensure their demobilization and effective disarmament, and stresses the urgent need to raise current human rights standards, supports the work of the working group and the task given to its chairman to undertake broad informal consultations, and expresses the hope that it will make further progress prior to the fifty-fifth session of the Commission with a view to finalizing this work.

26. The Rome Statute of the International Criminal Court, adopted in July 1998, stipulates that conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities is a war crime in both international and non-international armed conflicts.

27. The members of the Organization of African Unity (OAU) have adopted the African Charter on the Rights and Welfare of the Child, which is open for ratification. Stipulating that a child means every human being below the age of 18 years, the Charter further stipulates that States Parties shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child.

28. Some States are now in the process of changing their national legislation in order to bring it into conformity with their ambitions to achieve higher international standards for the prevention of the use of children in hostilities.

29. Several Governments, United Nations agencies, international organizations and NGOs have initiated an increasing number of programmes in affected countries like Sierra Leone, Uganda, Liberia, Sudan and Sri Lanka, in order to identify child soldiers, obtain their release and demobilization, and to provide them with physical and psychological support and education in order to facilitate their return to normal life.

30. A United States congressional resolution of October 1998 has been included in the United States Department of Defence Appropriations Act for Fiscal Year 1999. It condemns inter alia the use of child soldiers and urges no blocking of international efforts to establish 18 years as the minimum age for participation in armed conflicts.

31. The NGO Coalition to Stop the Use of Child Soldiers was established in June 1998. It will organize public education and media campaigns and regional conferences with the aim of stopping the use of children in armed conflict and stressing the importance of concluding an optional protocol prohibiting the military recruitment and use in hostilities of all children under the age of 18.

32. In June 1998, a conference on children in armed conflict was organized by the Government of the United Kingdom and the Special Representative of the Secretary-General on children in armed conflict. A similar symposium for the Asian and Pacific region was organized in cooperation with the Government of Japan. They will be followed by conferences in other regions. The European Parliament organized a special meeting in December 1998 on child soldiers in cooperation with the NGO Coalition.